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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 198 7
T.A. No. 469

DATE OF DECISION 16.2.1990

S.B.Ram Petitioner

Mr. G.D. Samant Advocate for the Petitioner(s)

Versus

Union of India & others Respondent

Mr. V.G. Rege. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G. Sreedharan Nair, V.C.

The Hon'ble Mr. P.S. Chaudhuri, M(A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?


(G. Sreedharan Nair)
Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH, NEW BOMBAY

Registration No. TR No. 469 of 1987

Date of decision 16.2.1990

S.B. Ram

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Applicant

- versus -

The Union of India and others..

Respondents

CORAM : Hon'ble Shri G.Sreedharan Nair, Vice-Chairman.

Hon'ble Shri P.S. Chaudhuri, Member (A).

Counsel for the applicant : Mr. G.D. Samant.

Counsel for the respondents : Mr. V.G. Rege.

O R D E R

G. Sreedharan Nair, Vice-Chairman :- This relates to Writ Petition No.237 of 1983 on the file of the High Court of Bombay, received on transfer.

2. The applicant while working as Inspector, Control, in the scale of pay of Rs.550-800 was proceeded against by the issue of a memorandum of charges dated 25.1.1982 under the Central Civil Services (Classification, Control and Appeal)Rules, 1965, for short 'the Rules'. The imputation was that he attempted to deceive the Government by submitting a false L.T.C. claim for Rs.2,520/- The applicant submitted his reply to the memorandum of charges where he stated that he did not cheat or deceive the authorities. The disciplinary authority by the order dated 21.2.1982 imposed upon the applicant the penalty of reducing him to the post of Assistant Inspector, Control, ^{will be} and direction that on such reversion he will draw pay at the

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minimum of the time-scale of that post. On appeal, by the order dated 7.7.1982 the appellate authority modified the penalty to the effect that the pay of the applicant in the lower grade will be at Rs.560/-.

3. The applicant has prayed for quashing the order imposing the penalty. It is urged that by the order two penalties have been awarded and as such it is not sustainable. It is pointed out that the disciplinary authority proceeded on the wrong assumption that the applicant had admitted the charges. According to the applicant there was no such admission and the absence of an enquiry is violative of clause (2) of Article 311 of the Constitution of India. There is also the plea that the order of the appellate authority is not a speaking order.

4. In the reply filed on behalf of the respondents, it is stated that as doubt was felt about the genuineness of the L.T.C. claim, reference was made to the Railway authorities when it was found that no ~~such~~ first class tickets were issued, ^{and} as the claim of the applicant was for first class railway fare, the proceedings were initiated. It is stated that as it was admitted that the family of the applicant did not travel by first class, the charge stood clearly proved and there was no necessity for the conduct of an enquiry. The allegation that two punishments have been given is denied. The attack against the impugned order is stated to be without basis.

5. There is no merit in the first point raised by the applicant that actually two punishments have been

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given. The penalty that has been imposed is reduction to the lower post, which is provided under clause (vi) of rule 11 of the Rules. Though there was an error in the order of the disciplinary authority in fixing the pay of the applicant on reversion to the lower post at Rs.425/- per mensem which is the minimum of the time-scale of pay of that post, the said mistake was rectified by the appellate authority by fixing the pay in the lower post at Rs.560/- with effect from the date of the order of the disciplinary authority.

6. However, there is force in the plea of the applicant that there has been violation of clause (2) of Article 311 of the Constitution of India as no reasonable opportunity of defence was given to the applicant by the conduct of an enquiry as contemplated under the Rules. It may be noted that the memorandum of charges was issued stating that an enquiry is proposed to be held under rule 14 of the Rules. But when the applicant submitted his written ^{statement of} defence, the disciplinary authority, holding that he has admitted the charges, without ~~admitting~~ proceeding with the enquiry, straightaway held the applicant guilty of the charge and imposed the penalty. There is considerable force in the submission of counsel of the applicant that there was no admission of the charge, but only an admission of certain facts. When the imputation as such is not admitted, it cannot be held that there is an admission of the charge so as to dispense with an enquiry. The penalty that has been imposed is one of reduction in rank, and as such in view of the mandate under clause (2) of Article 311 of the Constitution of India, the applicant was entitled to

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reasonable opportunity of defence.

7. The imputation was that the applicant deliberately attempted to deceive the Government by submitting false claim. No doubt, the applicant had claimed Railway fare as follows :-

i) First class ticket No. F 729082 for four adults and one child at Rs.280/- x 4½ from Nasik Road to Dumraon (Eastern Railway).

ii) First Class ticket No. B 360254 for four adults and one child at Rs.280/- x 4½ Dumraon to Nasik Road.

The explanation of the applicant was that he did not accompany his family members who conducted the journey and that his wife actually paid the First Class fare but was duped and was given only Second Class tickets. The circumstance that the actual ticket no. was specified in the L.T.C. claim was highlighted by him to prove that there was no intention to deceive Government. From the aforesaid explanation it is too much to assume that it contains an admission of the imputation that the applicant attempted to deliberately ~~deceive~~ the Government. Hence, the applicant should have been afforded reasonable opportunity of establishing his innocence by the conduct of an enquiry. It was without holding any enquiry that the disciplinary authority arrived at the conclusion that it is a fit case for imposing a deterrent punishment, and imposed the penalty ~~in~~ ^{of} reduction in rank.

8. In the memorandum of appeal the applicant had specifically urged that there has been violation of the provision contained in clause (2) of Article 312 of the

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Constitution of India, but the appellate authority is not seen to have adverted to that aspect.

9. In the circumstances, the order of the disciplinary authority as well as that of the appellate authority are vitiated and cannot be sustained. Both the orders are accordingly quashed. The applicant shall be allowed consequential benefits within a period of three months from the date of receipt of copy of this order. However, it is made clear that this order ^{in case they so desire,} shall not preclude the respondents, from proceeding against the applicant on the memorandum of charges that was issued by conducting an enquiry affording the applicant reasonable opportunity of being heard, in accordance with the Rules.

10. The application is disposed of as above.



(P.S. Chaudhuri)
Member (A)



(G. Sreedharan Nair)
Vice-Chairman

Order dt. 16.2.90
formed on Application
& R. No. 1 to 3 of
dt. 5.4.90 &
NRI
24/4